



June 30, 1999

Ms. Susanna Holt
Assistant Attorney General
Executive Administration
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-1828

Dear Ms. Holt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125284.

The Office of the Attorney General received a request for information “relating to Mark Murr in connection with *State of Texas v. American Tobacco Co., et al.*, Civil Action No. 5:96-CV-91 in the U.S. District Court, Eastern District of Texas.” You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed a representative sample of the information at issue, exhibits 6 and 7.¹

Section 552.103(a) of the Government Code, the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v Houston Post Co.*, 684

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You have demonstrated that exhibits 6 and 7 are related to pending litigation. *State of Texas v. American Tobacco Co.*, No. 5:96-CV-0091 (E.D.Tex. 1996); *In re Private Counsel Fee Agreement*, No. 5:98-CV-270 (E.D.Tex., filed May 19, 1999) (Private Counsel's Motion to Confirm Party Status). Therefore, you may withhold exhibits 6 and 7 from disclosure under section 552.103(a) at this time. We note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We note also that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to resolve this matter under section 552.103, we do not address your other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125284

Encl. Submitted documents

cc: Mr. John Gerhart
Jenkins & Gilchrist
1445 Ross Avenue
Dallas, Texas 75202
(w/o enclosures)